

RACIAL PROFILING AND THE WAR ON TERROR: CHANGING TRENDS AND PERSPECTIVES¹

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Minorities in the United States have often been treated unfairly by law enforcement agencies. Prior to the September 11, 2001, terrorist attack on the United States, Blacks were the main victims of racial profiling. Since the terrorist attack, however, Arabs and Muslims are becoming the primary targets for profiling by law enforcement agencies. There are some remarkable similarities between the profiling of Blacks and the profiling of Arabs and Muslims. In both cases, the fundamental problems with racial profiling are that it violates the civil liberties of innocent people and denies minorities the equal protection of the law. The War on Terror has redefined racial profiling. It has not only led to a shift in the target population, but it has also changed the ways in which racial profiling is conducted.

This paper examines the problem of racial profiling before and after the terrorist attack of 9/11. It focuses on three kinds of changes that are crucial for understanding the current problem of racial profiling. These are: the changing rationale for racial profiling; the shift in the target population; and the diminishing efforts to combat racial profiling. The rationale for racial profiling has often been linked to the government's responsibility to protect

the public against crime, violence, and other forms of social disorder. Prior to the 9/11 attack, the rationale for racial profiling centered mainly on the need to protect the public against drug trafficking and illegal immigration. Blacks and Hispanics were the primary targets for racial profiling. Since the 9/11 attack, however, terrorism has become the primary security concern. This concern has led to a dramatic increase in the profiling of Arabs and Muslims, who are often considered terrorists. Furthermore, the problem of terrorism has led to the erosion of the intolerance toward racial profiling that characterized the pre-9/11 period. This erosion is reflected in the swift introduction of new security regulations that target Arabs and Muslims as well as the sharp decline in the efforts to combat racial profiling.

The profiling of Blacks in the post-civil rights era represents a dysfunction within American law enforcement institutions. Despite its persistence, racial profiling of Blacks has been recognized as a problematic issue that must be combated. In contrast, racial profiling of Arabs and Muslims, especially since the 9/11 terrorist attack, can be seen as a state-sponsored crackdown on Arabs and Muslims that is intended to protect the United States against terrorism. However, racial profiling of Arabs and Muslims has implications for minority communities. Essentially, it is an extension of the biased law enforcement practices to which Blacks and Hispanics have been subjected. Most importantly, racial profiling undermines civil liberties, which are essential for a democratic society. The introduction of new and stringent security regulations increases the powers of law enforcement agencies and opens up new channels for the mistreatment of disadvantaged minority groups, who are often at a far greater risk of abuse. While fully recognizing the urgency of combating terrorism, I argue that it is equally imperative for a democratic society to protect civil liberties and ensure equality before the law. Liberty and equality are the fundamental values of democracy. By violating these values, racial profiling raises questions about American democracy. The critical question is how democratic is a country that violates the civil liberties of minorities and fails to give them equal protection of the law.

Constitutional Issues in Racial Profiling

Profiling has often been an important tool for law enforcement

agencies in their fight against crime. In its most basic form, profiling is a technique that can help law enforcement agencies concentrate resources in specific directions in order to maximize the chances of preventing crime or apprehending criminals (Schauer 2003). As David Harris rightly notes, "a profile is simply a set of characteristics—physical, behavioral, or psychological" (2002, p. 16). In criminal investigations, law enforcement agents often develop profiles such as that of the rapist, serial killer, and drug-courier. However, profiles that are based on behavioral or psychological attributes differ from ones that are based on ascribed identities, such as race, ethnicity, national origin, or religious background. While the former focus on individuals, the latter tend to target specific communities and often lead to widespread violations of their civil liberties.

Racial profiling has become a generic term that describes the practice of targeting racial, ethnic, and cultural minorities by law enforcement agencies for stops, searches, or arrests. Over the past several years, this biased treatment of Blacks, Hispanics, Arabs, and Muslims has been eloquently expressed in common phrases such as *driving while black*, *driving while brown*, *flying while Arab*, and *flying while Muslim*, respectively. In its extreme form, racial profiling leads to police brutality. Police brutality refers to the use of excessive force or cruel and inhuman treatment against suspects by law enforcement agents. Just as minorities are the victims of racial profiling, they are also the victims of police brutality. While recognizing the differences between racial profiling and police brutality, I treat the two as closely intertwined problems. The interconnection is evident in the fact that most of the efforts to combat racial profiling were sparked by police brutality incidents. As a practical matter, the two problems are inseparable.

Racial profiling has generated serious constitutional and political debates. Traditionally, the question of racial profiling arises in cases related to the fight against illegal immigration and the war on drugs. These cases often involved Hispanics and Blacks, respectively. One must now add the War on Terror and its impact on Arabs and Muslims. The central question is whether racial profiling violates the principles of liberty and equality enshrined in the Fourth and Fourteenth Amendments of the United States Constitution. The Fourth Amendment guarantees

that “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause.” The Fourteenth Amendment further guarantees: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” While there is a consensus that the Constitution prohibits unreasonable search and seizure (without a probable cause) and biased enforcement of the law, the courts have often found it difficult to agree on what constitutes unreasonable search and seizure or bias in the process of enforcing the law. Furthermore, the courts are often faced with the difficulty of striking a fine balance between protecting the civil liberties of individuals and defending the public interest.

The constitutional issues surrounding racial profiling have been raised in several cases brought before the Supreme Court. In *United States v. Brignoni-Ponce* (1975), for example, the Supreme Court agreed that it is a violation of the Fourth Amendment for officers in a revolving patrol near the Mexican border to question motorists about their immigration status solely because the motorists looked like Mexicans. In *United States v. Martinez-Fuerte et al.* (1976), however, the Supreme Court allowed for some degree of racial profiling at a fixed border checkpoint in order to protect the public interest against illegal immigration. In addition, the Supreme Court has addressed the issue of racial profiling in drug-related cases. In *United States v. Sokolow* (1989), for example, the Supreme Court focused on the use of ongoing criminal activities, personal characteristics, and official profiles as grounds for suspicion and seizure. The Court agreed that law enforcement agents could use government profiles of drug couriers, as long as the agents could show a clear link between the person fitting the profile and the criminal conduct in question. In *United States v. Armstrong* (1996), the Supreme Court directly dealt with the issue of racial bias in the enforcement of drug trafficking laws. The central question was whether the defendants, who were Blacks, were singled out for prosecution because of their race, in violation of the equal protection clause of the Fourteenth Amendment. In this case, the Court placed the burden

of proof of racial bias upon the defendants. Effectively, the Court gave law enforcement agents discretionary powers in choosing whom to investigate.

In *Korematsu v. United States* (1944), the Supreme Court directly dealt with the issue of racial profiling and violations of civil liberties within the context of national security. The central issue was the legality of the Exclusion Order issued during World War II, which stipulated that after May 9, 1942, all persons of Japanese ancestry must move out of the West Coast military area because they were suspected of espionage. In justifying the Exclusion Order, the Court distinguished violations of civil liberties that might result from activities intended to protect the public as opposed to violations that were driven by racial antagonism. Despite its deep concerns over the violations of civil liberties, the Court agreed that it was permissible to expel all persons of Japanese ancestry because it was impossible to differentiate those who were disloyal from those who were loyal to the United States.

The ongoing legal battle surrounding the Al-Qaeda and Taliban suspects held at Guantanamo Bay and in the United States is likely to produce the most crucial Supreme Court ruling for understanding how the courts reconcile racial profiling with civil liberties and national security matters. The major issue is whether the government could detain the suspects indefinitely, without a free and fair trial, in order to protect the United States from terrorism. Most of the suspects are foreign nationals who are either Arabs or Muslims caught in Afghanistan or Pakistan. However, these cases could have great implications for the numerous Arabs and Muslims arrested in the United States for terrorism-related activities since the 9/11 attack. The most interesting cases are those of Yasser Hamdi and Jose Padilla, who are both United States citizens by virtue of birth. Hamdi is an Arab American caught on the battlefield in Afghanistan.² Padilla is a Hispanic who converted to Islam. He was arrested at O'Hare Airport in Chicago on his way from Pakistan and later accused of plotting to detonate a "dirty bomb" in the United States on behalf of Al-Qaeda. The United States government has classified the Al-Qaeda and Taliban suspects as "enemy combatants" and refused to grant them access to the courts (Elsea 2004). Instead, the government has established a military tribunal to try the suspects. The first

hearing began at the end of August 2004, with the appearance of four suspects. However, the tribunal has been strongly opposed by human rights advocates. In June 2004, the Supreme Court ruled that terror suspects held at Guantanamo Bay should be given access to the courts (*Rasul v. Bush* 2004). In November 2004, a federal court in Washington, D.C., halted the trial of Salim Ahmed Hamdan. The judge agreed that a competent review tribunal must first determine whether the suspect was entitled to the protection of the Geneva Convention before he could be tried in a military tribunal. This ruling was overturned by the Court of Appeals for the District of Columbia Circuit. The case is now at the Supreme Court. The designation of American citizens as enemy combatants has also been strongly challenged. In February 2005, a federal district judge in South Carolina ruled that an American citizen could not be detained as an enemy combatant. Judge Henry Floyd ruled that the government must release Jose Padilla, who had been detained since May 2002, without charges. However, the Court of Appeals for the Fourth Circuit has overturned this ruling. This case is also expected to reach the Supreme Court.

Racial profiling has also raised other kinds of constitutional concerns relating to the manner in which arrests are executed. In *United States v. Sharpe* (1985), for example, the Supreme Court addressed the question of what constitutes a reasonable length of time to hold a suspect while an investigation is taking place. The case also raised the issue of consent search. In this case, the Court rejected the defendants' claim that they were held for an unreasonable time without a probable cause and searched without their consent. Instead, the Court was more sympathetic to the logistical difficulties that the officers faced in executing the arrests. In *Whren v. United States* (1996), the Court dealt with the issue of pretext for seizure. The Court rejected the defendant's claim that they were arrested for drug possession without a probable cause. The Court agreed that a legitimate arrest for a traffic violation could lead to a probable cause for another arrest.

The above cases raise crucial questions about racial bias, civil liberties, and the public interest in the process of enforcing the law. These are the critical issues in the debate about racial profiling and the values of liberty and equality in a democratic society. While some of the suspects in the above cases were engaged in criminal activities, the problem with racial profiling is

that it violates the civil liberties of too many innocent people and compromises the guarantee of equal protection before the law. As Justice Marshall reminded us in *United States v. Sokolow* (1989), "Because the strongest advocates of Fourth Amendment rights are frequently criminals, it is easy to forget that our interpretations of such rights apply to the innocent and the guilty alike." Racial profiling, as noted by Justice Jackson in *Korematsu v. United States* (1944), also violates the fundamental assumption that "guilt is personal and not inheritable." However, in most of these cases, the Supreme Court has failed to unequivocally reject racial profiling. This has left minority people vulnerable to abuse by law enforcement agencies. As Justice Brennan lamented in *United States v. Martinez-Fuerte et al.* (1976), "This defacement of Fourth Amendment protections is arrived at by a balancing process that overwhelms the individual's protection against unwarranted official intrusion by a governmental interest said to justify the search and seizure. But that method is only a convenient cover for condoning arbitrary official conduct."

Racial profiling is not only a threat to minority communities, but also a problem for American democracy. As I have noted, racial profiling violates the fundamental values of liberty and equality, which are the foundations of a democratic society. Democracy is defined as a system of government in which rulers are elected through regular free and fair elections (Dahl 1971). What is often forgotten is that elections are actually a means of ensuring that the civil liberties and human dignity of all citizens are protected (Tocqueville 1956). These include liberty from arbitrary arrest, right to a free and fair trial, and equality before the law. Thus, the real test for a democratic society is not only how often it holds elections, but also how well it protects the civil liberties of its citizens, especially minorities. By violating the values of liberty and equality, racial profiling undermines the trust of minorities in the very institutions of power that are supposed to protect them and contributes to their disenchantment with democracy.

Traditional Minorities and Racial Profiling

Over the past decades, Blacks and Hispanics have been victims of racial profiling and police brutality. More than any other group, they have been subjected to unnecessary stops and searches, humiliations, beatings, and even death by police officers,

especially in the major cities, such as New York and Los Angeles. In New York City, for example, the Civilian Complaint Review Board (CCRB) has documented numerous cases of improper treatment of citizens by officers of the New York Police Department (NYPD). The cases show that minorities, especially Blacks, are far more likely to be mistreated by the police. Between 1997 and 2001, for example, the CCRB identified 27,079 alleged victims. Blacks and Hispanics respectively accounted for 52% and 25% of the alleged victims, compared to 19% for Whites (CCRB 2002, p. 82). Given the racial composition of the city's population, the data clearly show that Blacks are at a disadvantage.³ In 2003, Blacks still accounted for 52% of the alleged victims of police mistreatment, while the proportion of Hispanics and Whites slightly changed to 24% and 19% respectively (CCRB 2004, p. 51). Even more troubling is the fact that Blacks are overrepresented among the victims whose allegations have been substantiated. In 1999 and 2000, for example, Blacks represented 54% of such victims. The proportion of Blacks fell to 43% in 2001, but by 2003, it had risen to 53%. The proportion of Whites ranged from 17% in 1999, to a high of 22% in 2001, before dropping to 21% in 2003. Since 1999, the proportion of Hispanics has ranged from 23% in 2000 to 26% in 2003, with the exception of 2001 when it rocketed to 32% (CCRB, 2004, p. 108).

In Los Angeles County, Blacks and Hispanics are also more likely to be stopped, searched, and arrested by the Los Angeles police compared to Whites. Out of the 496,416 drivers who were stopped in 2003, for example, 19% were Blacks. Though the number of White and Hispanic drivers stopped reflected their share of the county's population, White drivers were far less likely to be searched or arrested after they have been stopped.⁴ In fact, only 5% of the White drivers were searched, compared to 20% of the Black and Hispanic drivers. Furthermore, only 2% of the White drivers were arrested, compared to 4% of the Blacks and 5% of the Hispanics. Similarly, of the 23,498 passengers in cars that were stopped by the police in 2003, 34% were Blacks and 51% Hispanics, compared to 13% for Whites. Sixty-one percent of the Hispanic and 66% of the Black passengers were searched, compared to 50% of the Whites. The situation is not much different for minority pedestrians. Blacks and Hispanics, respectively, accounted for 36% and 43% of the 178,998 pedestrians stopped

in 2003, compared to 17% for Whites. Furthermore, 55% of the Black and 52% of the Hispanic pedestrians were searched, compared to 38% of the Whites. Twenty-six percent of the Black and 27% of the Hispanic pedestrians were arrested, compared to 14% of the Whites (LAPD 2003).

These disturbing statistics are a daily reality for Blacks and other minorities, who are mistreated by law enforcement officers across the country. The cases of mistreatment range from unnecessary stops and searches, to humiliation of innocent people, and, in worst-case scenarios, murder of unarmed civilians. In May 1996, for example, Alvin Penn, a prominent African American politician in Connecticut, was unnecessarily stopped and questioned by a police officer in Trumbull, Connecticut (Weizel, 1998). So too in January 1996, 42-year old Gary Rodwell of Philadelphia was stopped and searched for drugs on the I-95 highway in Maryland. Like other Black motorists on I-95, Rodwell was abused and humiliated during the search. He was part of a class-action lawsuit filed by the American Civil Liberties Union (Valentine 1998). Some of the most disturbing incidents of abuse include the Rodney King beating in Los Angeles and the sodomizing of Abner Louima in New York City. King was seriously beaten by police officers of the Los Angeles Police Department (LAPD) on March 3, 1991. The whole incident was video taped by a bystander (Christopher 1991). Thirteen years after the King incident, LAPD officers were again caught on tape beating a Black person. The victim, Stanley Miller, was repeatedly hit with a flashlight and kicked. The Miller incident, which occurred in June 2004, is under investigation. Initial reports indicate that Miller was unarmed and did not resist arrest (Madigan 2004). On August 9, 1997, Louima was beaten and sexually molested with the wooden handle of a toilet plunger in a bathroom at the 70th Precinct Station House by four officers of the NYPD (*United States of America against Justin Volpe* 1999).

Numerous unarmed Blacks and Hispanics have also been killed by police officers. In January 1996, for example, a 15-year old Puerto Rican boy, Frankie Arzuega, was killed by a NYPD officer. Arzuega was a passenger in a car that was stopped by the police (Human Rights Watch 1998). So too in December 1997, William Whitfield was killed by a NYPD officer at a supermarket (Rutenberg and Standora 1997). One of the most horrific cases

was the brutal killing of Amadou Diallo in February 1999. Four NYPD officers, who were looking for a rapist, fired forty-one bullets at Diallo, who was standing outside of his apartment building. Nineteen of the bullets hit him. He was unarmed and had no criminal record (Cooper 1999). A year after Diallo was killed, Patrick Dorismond was also shot dead during a scuffle with undercover NYPD officers. Dorismond was unarmed and had not committed a crime (Rashbaum 2000).

Clearly, Blacks are disproportionately overrepresented among the victims of police abuse of power. This reality points to serious violations of the principles of equality and liberty guaranteed in the United States Constitution. In their fight against crime, law enforcement agents have targeted minorities for stops, searches, and arrests. In the process, they have violated the civil liberties of innocent minorities. Though one may be tempted to treat some of these cases as isolated events, it is important to note that they are serious violations of the core values of democracy. Fittingly, the profiling of traditional minorities, especially Blacks, has been strongly condemned by civil rights activists and recognized by political leaders as a problem that needs to be addressed. The debate is not whether there is a public interest that justifies the profiling of minorities, but how best to address the dysfunctions within the law enforcement agencies, and thereby end racial profiling and police brutality.

The War on Terror and Racial Profiling

The 9/11 terrorist attack on the United States has raised serious questions about national security. Unlike previous acts of terrorism that have been committed against the United States, the 9/11 attack was carried out by an external enemy that managed to infiltrate the United States homeland. Furthermore, the scale and nature of the attack was unprecedented (National Commission on Terrorist Attacks Upon the United States 2004). Despite its military strength, the United States was seriously challenged in its response to the terrorist attack. One of the biggest problems for the United States is the nature of the enemy. As we now know, the enemy is an underground organization that employs unconventional methods of warfare. This has led to a state of fear within the United States.

The United States has taken a twofold response to terrorism.

Externally, the United States is waging wars in Afghanistan and Iraq and has committed itself to building democracy in these countries. At home, the United States has reorganized the federal government and introduced new laws that increase the powers of the law enforcement and security agencies. One of the most controversial aspects of the domestic response is the passage of the USA Patriot Act 2001, which drastically increased the powers of the government to monitor and arrest people it deems a threat to the United State (United States 2001). The domestic response has raised serious concerns about the erosion of civil liberties (Armitage 2002). The United States District Court for the Southern District of New York recently ruled that the surveillance provisions of the Patriot Act violated individual rights (*John Doe v. Ashcroft* 2004). Unlike the case of other Americans, however, the threat of terrorism has made Arabs and Muslims uniquely threatened by the passage of the Patriot Act (Howell and Shryock 2003).

Like traditional minorities, Arabs and Muslims are now victims of racial profiling. However, while the profiling of Blacks and Hispanics has mostly occurred within the context of the wars on drugs and illegal immigration, the profiling of Arabs and Muslims is directly linked to the War on Terror. Not surprisingly, the profiling of Arabs and Muslims is primarily conducted by federal law enforcement agencies, which are now part of the Homeland Security Department. The suspicion toward Arabs and Muslims could be traced back to some of the early hostage crises as well as the hijacking and bombing of airliners during the 1970s and 1980s, the 1993 plot to bomb the World Trade Center, and the recent attacks on United States interests around the world (Harris 2002).

The 9/11 attack has not only reinforced the suspicion toward Arabs and Muslims, it has also opened a new approach in the profiling of Arabs and Muslims. Shortly after the 9/11 attack, the government introduced the National Security Entry-Exit Registration System (NSEERS). The system required adult males from twenty-four Arab and Muslim countries to be interviewed, fingerprinted, and photographed at United States ports of entry and designated immigration offices.⁵ In a clear demonstration of the abuses associated with the new system, the authorities arrested hundreds of Iranian and other Muslim men in Los Angeles who showed up at the registration office in December 2002. This

discriminatory registration system was strongly criticized. The government has now replaced NSEERS with a blanket entry-exit registration system, US-VISIT. Initially, US-VISIT did not apply to citizens of countries covered by the visa waiver scheme, mostly West Europeans and Japanese. Even though the new system looks unbiased, the fear is that it might be an instrument for the profiling of Arabs and Muslims.

The security regulations introduced after the 9/11 attack have led to the mistreatment and detention of numerous innocent Arabs and Muslims. The cases range from humiliating treatment of Arab and Muslim passengers at airports, to the use of minor immigration violations as a pretext to detain people suspected of being terrorists. Many others have been accused of having terrorist links, but denied a free and fair trial. In many cases, they are held incommunicado. The profiling of Arabs and Muslims has been documented by reputable human rights organizations.⁶ On January 1, 2002, for example, an Arab-American passenger on his way to Washington, D.C., was pulled out of the jet way by airport police officers and questioned by FBI agents. The man had already passed through all the necessary security checkpoints. He was later told that the American Airlines pilot requested the extra background check because of his Arab name (Ibish and Steward 2003, p 30). Though the actual number of people detained is still not known, it is recognized in the brief submitted by the Justice Department in *Center for National Security, et al. v. United States Department of Justice* that the government has detained numerous Arabs and Muslims. On November 1, 2001, for example, FBI agents arrested a Palestinian civil engineer in New York City and held him for twenty-two days before he was released on a bond. The man was arrested after someone falsely reported that he had a gun. The agents later discovered that the man's visa had expired. However, he had already filed for an extension of his visa with the Immigration and Naturalization Services. He was granted an extension while in detention (Human Rights Watch 2002, p. 12). Even more troubling was the case of Ali al Magtqari, who testified before the Senate Judiciary Committee. Magtqari, a citizen of Yemen, and his wife, Tiffany Huges, were detained and mistreated by federal agents. They were arrested on September 15, 2001, near the Fort Campbell, Kentucky, army base. Huges, who is an American citizen, was reporting for duty as a new

recruit accompanied by her husband. While in custody, the agents accused Magtqari of involvement in terrorism and abusing his wife. He was threatened with deportation, mistreated, and detained for nearly two months. He was eventually released after his wife paid a \$10,000 bond (American Immigration Lawyers Association 2001).

The situation of Arabs and Muslims in detention since the 9/11 attack is also troubling. In some cases, the conditions under which they are held violate United States and international norms on the treatment of detainees. For example, as reported by human rights organizations such as Amnesty International and Human Rights Watch, the detainees are sometimes held under unsanitary conditions and abused by security personnel. The detentions are further complicated by secrecy and extensive delay in bringing the suspects to trial. Many of the detainees also lack adequate legal representation (Amnesty International 2002). The violations of fundamental legal norms are most evident in the government's attempt to deny Jose Padilla and the detainees at Guantanamo Bay access to United States courts. In a clear rejection of the government's argument, the Supreme Court has upheld the rights of the detainees to a free and fair trial in United States courts (*Rasul v. Bush*, 2004).

The profiling of Arabs and Muslims since 9/11 represents a serious violation of the principles of liberty and equality enshrined in the Constitution. The critical question, however, is whether the profiling of Arabs and Muslims could be justified by the formidable national security challenge facing the country. While racial profiling is officially condemned, it is clear that the new security measures target Arabs and Muslims. The targeting of Arabs and Muslims points to a disturbing element of state-sponsored racial profiling. The problem is made worse by the government's reluctance to grant the detainees free and fair trials. The problem with state-sponsored racial profiling is that it creates institutional mechanisms that tacitly violate civil liberties and encourage biased law enforcement practices. While these institutional mechanisms might be seen as short-term measures intended to combat terrorism, they could easily evolve into covert draconian rules and practices that can be used against minorities.

The Fight against Racial Profiling

Racial profiling is a complex problem that violates the principles of liberty and equality, enshrined in the Fourth and Fourteenth Amendments of the Constitution. The violation of these principles raises concerns about American democracy, especially among minority communities. Numerous efforts have been made to combat racial profiling and police brutality (Walker 2005). Some of the most notable efforts have come from government officials, the courts, and civic organizations. However, these efforts are virtually limited to the fight against the profiling of Blacks before the 9/11 attack. The pre-9/11 efforts to combat racial profiling represented significant public rejection of the profiling of Blacks. The critical question is whether these efforts could be revived in a post-9/11 environment, characterized by the fear of terrorism, to combat the profiling of all minorities, especially Arabs and Muslims.

As racial profiling and police brutality against Blacks started to gain media attention during the 1990s, government officials were forced to face the problem (Lawrence 2000). Various investigations have been undertaken to examine police abuse of power. Some of the most notable cases are those of New York City and Los Angeles. In New York City, for example, Mayor David Dinkins appointed the Mollen Commission in July 1992. The Commission was given a mandate to investigate the nature and extent of corruption in the NYPD. While the investigation focused on corruption, the findings of the commission revealed a culture of brutality, abuse of power, and lack of accountability, which undermined the NYPD's relations with minorities. The commission recommended a wide range of internal reforms and called for the establishment of a permanent independent body to oversee the NYPD (Mollen 1994). New York City also tackled the problem of racial profiling and police brutality by transforming the CCRB, which had been controlled by the NYPD. Though the CCRB was established in 1953, it was not until the early 1990s that it became a meaningful body to deal with police abuse of power. In 1986, the city passed legislation, which allowed the inclusion of civilian members in the CCRB. In 1993, Mayor Dinkins and the City Council finally transformed the CCRB into an all-civilian body. The CCRB was given subpoena power and the authority to recommend disciplinary action against officers. Though these

were significant efforts in the fight against racial profiling, they have failed to end the problem. Some of the failures are evident in the huge numbers of police abuse of power cases documented by the CCRB, the sodomizing of Louima, and the killing of Diallo.

In Los Angeles, Mayor Tom Bradley established the Christopher Commission to examine the problem of police abuse of power shortly after the King beating in 1991 (Christopher 1991). The commission discovered a disturbing trend of racism (and gender bias) among officers, who often spoke of minorities in language that compared them to lower animals. It found that a significant number of officers repeatedly violated the written policies and guideline of the LAPD on the use of force. This problem was attributed in part to inadequate supervision and failure to confront police abuse of power. The commission was also disturbed by the way the LAPD handled complaints against officers. As it noted, "the complaint system is skewed against complainants" (Christopher 1991, p. xix). To address the problem, the commission recommended several structural changes. In particular, it called for the creation of the Office of the Inspector General within the Police Commission, the strengthening of the Police Commission so that it could provide meaningful civilian oversight over the police department, and the introduction of a limit of two five-years terms for the Office of Chief of Police. It also urged Chief Gates, who had served as police chief for thirteen years, to step down. Most importantly, the commission called for a sustained recruitment of minority officers and the creation of anti-discrimination and cultural awareness programs. Five years after the Christopher Commission, the Los Angeles Police Commission asked Merrick Bobb, Mark Epstein, Nicolas Miller, and Manuel Abascal to review the implementation of the recommendations of the Christopher Commission. One of the most crucial elements of the Bobb report was the recruitment of minority officers. The report noted that although progress has been made, "the LAPD still has a way to go before its composition reflects the diversity either of the City's population or the County's labor pool" (Bobb 1996, p. 21). The report also expressed disappointment in the implementation of the anti-discrimination and cultural awareness programs recommended by the Christopher Commission.

In December 1991, the Board of Supervisors of Los Angeles County commissioned Special Council James Kolts to review the

“politics, practices and procedures of the Sheriff’s Department . . . as they relate to the allegations of excessive force, the community sensitivity of deputies and the department’s citizen complaint procedure” (Kolts 1992, p. 1). The Kolts report called upon the Los Angeles Sheriff’s Department to make it clear at every level of the department that it would not tolerate excessive force. It also called for civilian oversight in the citizen complaints review process and citizen involvement at the station level. The investigations clearly pointed out that the profiling of Blacks was unacceptable. The Christopher, Bobb, and Kolts reports attributed the problem of police abuse of power to the dysfunctions within the police departments. However, efforts to rectify the problems have been either slow or ineffective.

At the federal level, Presidents Bill Clinton and George W. Bush have issued directives to federal law enforcement agencies aimed at combating racial profiling (White House 1999, 2001). However, these directives have very little impact on the activities of local law enforcement agencies. In Congress, Representative John Conyers, Senator Frank Lautenberg, and Senator Russell Feingold have lead efforts to pass a law against racial profiling. Their efforts have brought significant national attention to the profiling of Blacks. Some of the most notable efforts include the attempts to pass the Traffic Stops Statistics Act of 1997/1999 and the End Racial Profiling Act of 2001/2004. Unfortunately, none of these bills passed in Congress. The failure to pass a law against racial profiling represents a significant lack of political will at the federal level to take bold actions against racial profiling. This lack of political will is in sharp contrast with the enthusiasm that surrounded the passage of the Patriot Act.

In general, racial profiling cases have not been successful in the courts. However, police brutality cases often draw attention to the problem of racial profiling. In some cases, justice has been realized for Black victims of police brutality. The cases that have received the most public attention are the Rodney King beating, the sodomizing of Abner Louima, and the shooting of Amadou Diallo. Four officers of the LAPD were tried in federal court for beating Rodney King. Two of the offices were eventually found guilty of violating King’s civil rights and sentenced to thirty months in prison (*United States of America v. Stacey C. Koon, et al.* 1993). In his civil suit against the City of Los Angeles, King was awarded

\$3.8 million (Mydans 1994). In the Louima case, several NYPD officers were charged with aggravated sexual abuse, first degree assault, and cover up. Justin Volpe was sentenced to thirty years in prison after pleading guilty to assault and sexual abuse (*United States of America against Justin Volpe* 1999). Charles Schwarz was found guilty of assault, sexual abuse, and cover up. He was sentenced to sixteen years in prison. Thomas Weise and Thomas Bruder were found guilty of cover up and sentenced to five years. In February 2002, however, the Court of Appeals overturned the convictions of Schwarz, Weise, and Bruder. Ronaldo Aleman and Francisco Rosario were convicted for making false statements and sentenced to two and three years of probation, respectively (*United States of America v. Charles Schwarz, et al.* 2002 and Feuer 2001). Louima also filed a civil lawsuit against the City of New York and the Patrolman's Benevolent Association. In July of 2001, the case was settled for \$8.75 million (*Abner Louima, et al. against City of New York, et al.*, 2004). Unlike the King and Louima cases, all four police officers in the Diallo case were cleared of the criminal charges against them. The officers were tried for second degree murder, second degree manslaughter, and criminally negligent homicide. Notwithstanding the disappointing verdict, the Diallo case led to tremendous outcry against police brutality and racial profiling. The family of Diallo filed a civil lawsuit against the City of New York and eventually reached a \$3 million settlement with the city (Feuer 2004). Though these cases were significant development in the fight against racial profiling and police brutality, the courts have not been effective. In many cases, prosecution has been difficult, leading to the acquittal of officers. Even when officers are convicted, the higher courts often overturn the convictions.

Racial profiling and police brutality against Blacks have prompted massive street protests from minority communities, civil rights activists, and the public at large. To a large degree, the protests manifest the public frustrations with the ineffectiveness of the political and judicial approaches in combating racial profiling and police brutality. Most of the protests galvanized around the Rodney King beating, the sodomizing of Abner Louima, and the murder of Amadou Diallo. Shortly after the Ventura County Superior Court jury acquitted the four officers accused of beating Rodney King, an uprising erupted in Los Angeles. African

Americans protested what many saw as a racially biased decision. The uprising left 52 people dead and more than 2,000 injured. Nearly a billion dollars worth of property was also damaged. The national guards and military troops were deployed to quell the violence, which lasted for three days. More than 16,000 people were arrested during the uprising (Oliver 1993).

While Los Angeles suffered from an uprising, New York City has been plagued by bitter demonstrations against racial profiling and police brutality. The protests began shortly after the sodomizing of Louima. On August 27, 1997, the Haitian community, supported by a cross-section of New York City's diverse communities and civil rights organizations, organized a huge demonstration. The demonstrators, estimated at 7,000 by the police and 15,000 by the organizers, marched from Grand Army Plaza in Brooklyn to City Hall in lower Manhattan. They demanded that Mayor Rudy Giuliani take action against racial profiling and police brutality. In addition, they called for the strengthening of the CCRB and the ending of the 48-hour rule, which gave police officers accused of brutality two days to prepare before they talk to investigators. More than a hundred people were arrested during the demonstration (Kifner 1997). Numerous smaller protests were also held around the city and at the 70th Precinct Station House.

The demonstrations against racial profiling and police brutality greatly intensified after the shooting of Amadou Diallo. Rev. Al Sharpton and other community leaders led a series of rallies denouncing police abuse of power. One of the biggest demonstrations took place on April 15, 1999. It drew around 10,000 people of diverse racial and ethnic backgrounds. The demonstrators called for federal monitoring of police misconduct and civilian oversight of the NYPD. The demonstrators also demanded the hiring of more minority police officers, the creation of a permanent special prosecutor for police brutality and corruption, the strengthening of the CCRB, an end to the use of hollow-point bullets, and the publications of an annual report on police misconduct by the Justice Department (Wilgoren April 1999). The daily protests escalated after the acquittal of the four officers who killed Diallo. Some of the most touching demonstrations were those organized by students. On March 3, 2000, for example, more than 500 students from five high schools

held a demonstration near Brooklyn Borough Hall denouncing police abuse of power and the Diallo verdict (Goodnough 2000). The daily demonstrations against police brutality in New York City also included high profile acts of civil disobedience. More than 1,200 demonstrators were arrested for civil disobedience during the first three months after the shooting of Diallo (Hicks 1999). Some of the most prominent people arrested for civil disobedience during the protests included Rev. Sharpton, former Mayor Dinkins, Representative Charles Rangel, New York State Comptroller H. Carl McCall, former Congressman Rev. Floyd Flake, Rev. Jesse Jackson, and actors Ossie Davis and Susan Sarandon (Wilgoren March 1999).

The demonstrations were critical forms of civic participation in the fight against racial profiling, which reminded the United States of the core values of democracy, namely liberty and equality. The demonstrations brought to light the problems of unequal treatment of citizens before the law and violations of civil liberties associated with the profiling of minorities. Most importantly, the demonstrations sent a clear message that the public does not accept the profiling of Blacks. Unfortunately, the demonstrations against racial profiling subsided right after the 9/11 attack, even though the problem of racial profiling is still prevalent.

Conclusion: Racial Profiling and Democratic Values

Racial profiling poses two kinds of challenges for the United States. The first challenge is to end the current violations of civil liberties and ensure equality before the law for all citizens. As we have seen, there have been vigorous efforts to end racial profiling and police brutality against Blacks. However, these efforts have only produced minimal results. Congress has failed to pass the necessary laws to combat racial profiling. Furthermore, attempts to reform police departments in New York and Los Angeles have been slow. In the courts, it has been difficult to convict officers engaged in police brutality. Despite these shortcomings, there is a strong rejection of the profiling of Blacks. The only problem is finding the proper mechanisms to combat the profiling of Blacks. While racial profiling of Blacks has been recognized as a problem for American society, the profiling of Arabs and Muslims has not been fully acknowledged as a problem. Since the 9/11 attack, efforts to end racial profiling have virtually ended. Yet, numerous

Arabs and Muslims have been wrongfully detained, mistreated, or denied a free and fair trial. With the exception of the street protests against the Iraq war and the works of committed human rights activists, there are no serious efforts to end the profiling of Arabs and Muslims. The second challenge is to protect the values of liberty and equality from the anti-democratic features of the new security regulations aimed at combating terrorism. While the regulations are clearly aimed at protecting the United States from terrorism, the danger is that any new instrument of profiling directed toward Arabs and Muslims can become a potential tool for the violation of the civil liberties of other citizens. Such violations could seriously undermine the essence of democracy. As we struggle to end racial profiling, the goal should not be to substitute one victim for another, but to fight for the values of liberty and equality, which protect all citizens in a democratic society.

Notes

¹ I am grateful to Jacob Frank for providing library assistance for this paper.

² Shortly after the Supreme Court gave the detainees access to United States courts in 2004, the United States government reached an agreement with Hamdi to renounce his United States citizenship in exchange for a safe return to Saudi Arabia, where his parents came from.

³ According to the New York City Department of City Planning, in 2000 the city's population was 8,008,278. The racial distribution was: White Non-Hispanic 35.0%, Hispanic Origin 27.0%, Black/African American Non-Hispanic 24.5%, Asian or Pacific Islander Non-Hispanic 9.8%, Other 3.7%.

⁴ According to the Los Angeles Department of City Planning in 2000 the population of Los Angeles was 46.5% Hispanic-Latino, 29.7% White, 10.9% Black/African America, 9.9% Asian, and 3.0% other.

⁵ The countries are: Afghanistan, Algeria, Bahrain, Bangladesh, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Libya, Lebanon, Morocco, Oman, Pakistan, Qatar, Somalia, Saudi Arabia, Sudan, Syria, Tunisia, the United Arab Emirates, and Yemen. North Korea was also included in the list.

⁶ For a detailed description of cases of mistreatment of Arabs and Muslims see: Ibish and Steward 2003, Human Rights Watch August 2002, and Amnesty International 2002.

References

Abner Louima, et al., against City of New York, et al., 98 CV 5083 (SJ), U.S. District Court for the Eastern District of New York (2004).

American Immigration Lawyers Association. "Testimony of Ali Al-Maq-tari Before the Committee on the Judiciary of the United States Senate; December 4, 2001." (December 6, 2001). Internet: <<http://www.aila.org/contentViewer.aspx?bc=9,576,971,975>> Accessed: July 2, 2004.

Armitage, John. "State of Emergency: An Introduction." *Theory, Culture & Society* 19, 4 (2002): 27-38.

Amnesty International. "United States of America: Amnesty International's Concerns Regarding Post September 11 Detentions in the USA." AI INDEX: AMR 51/044/2002. (March 14, 2002). Internet: <<http://web.amnesty.org/library/print/ENGAMR510442002>>. Accessed on July 2, 2004.

Bobb, Merrick. *Five Years Later: A Report to the Los Angeles Police Commission on the Los Angeles Police Department's Implementation of Independent Commission Recommendations*. Los Angeles: Los Angeles (California) Police Department, 1996.

CCRB (New York City Civilian Complaint Review Board). "Status Report January–December 2001." Vol. IX, No. 2. (May 2002). Internet: <<http://www.nyc.gov/html/ccrb/pdf/ccrbann2001.pdf>> Accessed December 3, 2004.

_____. "Status Report January–December 2003." Vol. XI, No. 2. (June 2004). Internet: <<http://www.nyc.gov/html/ccrb/pdf/ccrbann2003.pdf>> Accessed December 3, 2004.

Christopher, Warren. *Report of the Independent Commission on the Los Angeles Police Department*. Los Angeles: The Commission, 1991.

Cooper, Michael. "Officers in Bronx Fired 41 Shots, And an Unarmed Man is Killed." *New York Times*. February 5, 1999, pg. A1.

Dahl, Robert. *Polyarchy: Participation and Opposition*. New Haven: Yale University Press, 1971.

Elsea, Jennifer, K. *Detention of American Citizens as Enemy Combatants*. Washington, D.C.: Congressional Research Service, 2004.

Feuer, Alan. "2 Ex-Officers In Louima Case Get Probation For Lying." *New York Times*, February 10, 2001, pg. B2.

Feuer, Alan. "\$3 Million Deal In Police Killing Of Diallo in '99." *New York Times*, January 7, 2004, pg. A1.

Goodnough, Abby. "Hundreds of Students March Against Diallo Verdict." *New York Times*, March 4, 2000, pg. B4.

Harris, David. *Profiles in Injustice: Why Racial Profiling Cannot Work*. NY: The New Press, 2002.

Hicks, Jonathan P. "Diverse Coalition Plans March to Protest Police Misconduct" *New York Times*, April 4, 1999, section 1, pg. 22.

Howell, Sally and Andrew Shryock, "Cracking Down on Diaspora: Arab Detroit and America's 'War on Terror'" *Anthropological Quarterly*, 76, 3 (Summer 2003): 443-462.

Human Rights Watch. "Shield from Justice: Police Brutality and Accountability in the United States." (June 1998). Internet: <<http://www.hrw.org/reports98/police/uspo99.htm>>. Accessed May 12, 2004.

Human Rights Watch. "Presumption of Guilt: Human Rights Abuses of post-September 11 detainees." *Human Rights Watch* vol. 14, No. 4(G), August 2002.

Ibish, Hussein and Anne Steward. "Report on hate crimes and discrimination against Arab Americans: The post-September 11 backlash," September 11, 2001-October 11, 2002. Washington, D.C.: American-Arab Anti-Discrimination Committee, 2003.

John Doe v. Ashcroft, 04 Civ. 2614 (VM), U.S. District Court for the Southern District of New York, 317 F. Supp. 2d 488 (2004).

Kifner, John. "Thousands Call on City Hall To Confront Police Brutality." *New York Times*, August 30, 1997, section 1, pg. 1.

Kolts, James G. *Los Angeles County Sheriff's Department: A Report*. Los Angeles: Los Angeles County (California) Sheriff's Department, 1992.

Korematsu v. United States, No. 22, 323 U.S. 214, 65 S. Ct. 193, 89 L. Ed. 194 (1944).

LAPD. "Consent Decree: Arrest, Discipline, Use of Force, Field Data Capture, and Audit Statistics Covering Period of January 1, 2003-June 30, 2003." <http://www.lapdonline.org/portal/generic.php?page=/inside_lapd/cd/consent_decree.htm> Accessed: October 2004.

_____. "Consent Decree: Arrest, Discipline, Use of Force, Field Data Capture, and Audit Statistics Covering Period of July 1, 2003-December 31, 2003." <http://www.lapdonline.org/portal/generic.php?page=/inside_lapd/cd/consent_decree.htm>. Accessed: October 2004.

Lawrence, Regina. *The Politics of Force: Media and the Construction of Police Brutality*. Berkeley: University of California Press, 2000.

Madigan, Nick, "Los Angeles Moves to Ease Tensions After Tape Captures Police Beating of Black Suspect," *New York Times*, June 25, 2004, pg. A15.

Mollen, Milton. *Commission Report*. New York: The Commission (Commission to Investigate Allegations of Police Corruption and the Anti Corruption Procedures of the Police Department), 1994.

Mydans, Seth, "Rodney King Is Awarded \$3.8 Million." *New York Times*, April 20, 1994, pg. A14.

National Commission on Terrorist Attacks Upon the United States. *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*. New York: Norton, 2004.

Oliver, Melvin et al. "Anatomy of a Rebellion: A Political-Economic Analysis," in *Reading Rodney King/Reading Urban Uprising*, pp. 117-141, edited by Robert Gooding-Williams. New York: Routledge, 1993.

Rashbaum, William. "Undercover Police in Manhattan Kill an Unarmed Man in a Scuffle." *New York Times*, March 17, 2000, pg. A1.

Rasul v. Bush, (No. 03-334), (No. 03-343), 124 S. Ct. 2686, 159 L. Ed. 2d 548, (2004).

Rutenberg, James and Leo Standora. "Cops Kill Unarmed Man, 22." *New York Daily News*. December 26, 1997, pg. 8.

Schauer, Frederick. *Profiles, Probabilities, and Stereotypes*. Cambridge, Mass.: Belknap Press of Harvard University Press, 2003.

Tocqueville, Alexis de. *Democracy in America*. NY: Penguin Books, 1956.

United States. *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001*. Washington, D.C.: U.S. G.P.O., 2001.

United States against Justin Volpe, 98 CR 196, U.S. District Court for the Eastern District of New York, 78 F. Supp. 2d 76, (1999).

United States Department of Justice, "Brief for the Respondent in Opposition," submitted by the Justice Department in *Center for National Security, et al. v. United States Department of Justice*, No. 03-472. (December 2003). Internet <<http://www.usdoj.gov/osg/briefs/2003/0responses/2003-0472.resp.pdf>> Accessed January 20, 2005.

United States v. Armstrong, No. 95-157, 517 U.S. 456, 116 S. Ct. 1480, 134 L. Ed. 2d 687 (1996).

United States v. Brignoni-Ponce, No. 74-114, 422 U.S. 873, 95 S. Ct. 2574, 45 L. Ed. 2d 607 (1975).

United States v. Charles Schwarz, Thomas Wiese, and Thomas Bruder, Justin A. Volpe and Michael Bellomo, No. 00-1479, U.S. Court of Appeals for the Second Circuit, 283 F.3d 76, (2002).

United States v. Martinez-Fuerte, No. 74-1560, 428 U.S. 543, 96 S. Ct. 3074, 49 L. Ed. 2d 1116 (1976).

United States v. Sharpe, No. 83-529, 470 U.S. 675, 105 S. Ct. 1568, 84 L. Ed. 2d 605 (1985).

United States v. Sokolow, No. 87-1295, 490 U.S. 1, 109 S. Ct. 1581, 104 L. Ed. 2d 1 (1989).

United States v. Stacey C. Koon, Laurence M. Powell, Timothy E. Wind, and Theodore J. Briseno, Case NO. CR 92 686 JGD, U.S. District Court for the Central District of California 833 F. Supp. 769 (1993).

Valentine, Paul W. "ACLU Files Suit Against Md. Police; Group Says Blacks Targeted Along I-95," *Washington Post*, June 05, 1998, pg. B01.

Walker, Samuel. *The New World of Police Accountability*. Thousand Oaks: Sage Publications, 2005.

Weizel, Richard "Police Memo Brings Conn. Prob FBI looks into Allegations of Racial 'Profiling' in Trumbull" *Boston Globe*, August 1, 1998, pg. B3.

White House, "Racial Profiling," Memorandum for the Attorney General. (February 28, 2001). <<http://www.whitehouse.gov/news/releases/2001/02/20010228-1.html>>

White House, "The Clinton-Gore Administration: Combating Racial Profiling." (June 9, 1999). <<http://clinton3.nara.gov/WH/Work/060999.html>>

Whren v. United States, No. 95-5841, 517 U.S. 806, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996).

Wilgoren, Jodi, "Diallo Rally Focuses on Call For Strong Oversight of Police," *New York Times*. April 16, 1999, pg. B1.

Wilgoren, Jodi. "The Diallo Shooting: The Outcry; Police Headquarters Rallies Won't End, Protesters Vow." *New York Times*. March 26, 1999, pg. B5.